

APPEAL NO. 031023  
FILED MAY 29, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 2, 2003. With respect to the issues before him, the hearing officer determined that the appellant (claimant) reached maximum medical improvement (MMI) on January 1, 2002, with an impairment rating (IR) of zero percent as certified by Dr. W, the designated doctor selected by the Texas Workers' Compensation Commission (Commission). In his appeal, the claimant argues that the hearing officer erred in giving presumptive weight to the designated doctor's report and asks that we adopt Dr. B July 31, 2002, date of MMI and 10% IR.

DECISION

Affirmed.

The parties stipulated that the claimant sustained a compensable injury on \_\_\_\_\_, and that Dr. W was selected by the Commission to serve as the designated doctor. On March 25, 2002, Dr. W examined the claimant. In a Report of Medical Evaluation (TWCC-69) dated March 28, 2002, Dr. W certified that the claimant reached MMI on January 1, 2002, and that his IR is zero percent. In his narrative report, Dr. W stated that the claimant falls within DRE Category I of the Guides to the Evaluation of Permanent Impairment, fourth edition (1st, 2nd, 3rd, or 4th printing, including corrections and changes, as issued by the American Medical Association prior to May 16, 2000) (AMA Guides). In a letter dated May 3, 2002, Dr. A, one of the claimant's treating doctors, emphasized what he considered "glaring mistakes" in Dr. W's certification. The Commission sent Dr. A's letter to Dr. W on May 30, 2002, and in his response to that letter of June 6, 2002, Dr. W stood by his determination that the claimant's correct IR was zero percent. The claimant was referred to Dr. B by his treating doctor. In a TWCC-69 dated July 31, 2002, Dr. B certified that the claimant reached MMI on that date with a 10% IR. In the narrative report accompanying his TWCC-69, Dr. B stated that he assigned the 10% IR based upon DRE Category III.

The hearing officer did not err in giving presumptive weight to the designated doctor's report, and in determining the claimant's MMI date and IR in accordance with that report. The difference in the ratings of Dr. B and the designated doctor is attributable to the fact that the designated doctor placed the claimant in DRE Category I and assigned him a zero percent IR from Table 73 of the AMA Guides, while Dr. B purportedly placed the claimant in DRE Category III and assigned a 10% IR. We cannot agree that Dr. B's report constitutes the great weight of the other medical evidence contrary to the designated doctor's report. Rather, this is a case where there is a genuine difference of medical opinion between the designated doctor and Dr. B as to whether the claimant is properly rated under DRE Category I or Category III. We have long held that by giving presumptive weight to the designated doctor, the 1989 Act

provides a mechanism for accepting the designated doctor's resolution of such differences. Texas Workers' Compensation Commission Appeal No. 001659, decided August 25, 2000; Texas Workers' Compensation Commission Appeal No. 001526, decided August 23, 2000. Accordingly, the hearing officer not err in giving presumptive weight to the designated doctor's report and adopting the January 1, 2002, MMI date and zero percent IR.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **ZURICH AMERICAN INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**LEO MALO  
12222 MERIT DRIVE, SUITE 700  
DALLAS, TEXAS 75251.**

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Elaine M. Chaney  
Appeals Judge

CONCUR:

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Veronica Lopez-Ruberto  
Appeals Judge

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Margaret L. Turner  
Appeals Judge